

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9335 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

PRABHAVATIBEN P ABHOLKAR

Versus

COMMISSIONER

Appearance:

M/S THAKKAR ASSOC. for Petitioners
MR PRANAV G DESAI for Respondent No. 1
MR VM PANCHOLI, AGP for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners, sixteen in number, challenge the termination of their services which, according to the petitioners, was resorted to by the respondents herein on the ground that the spouse of each

petitioner was in employment with the Government. The petitioners challenged the said purported termination by contending that the petitioners had put in 5 to 13 years service in the Mid-day Meal Scheme under the respondents and that the petitioners' services could not have been terminated. According to the petitioners, they were regularly selected after public advertisement and selection and therefore, their services were also required to be regularized.

2. When the petition has come up for hearing today, it is pointed out that out of 16 petitioners, 13 petitioners are already employed by the respondents in the Mid-day Meal Scheme and that only petitioner Nos. 1, 11 and 12 are not employed by the respondents. The respondents have stated in the reply affidavit and their sur-rejoinder that petitioner Nos. 1, 11 and 12 were found to have committed certain irregularities and, therefore, they have not been employed with effect from October, 1998.

At the hearing of this petition, the learned counsel for the petitioners submitted that respondent No. 2 could not have taken a decision adverse to petitioner Nos. 1, 11 and 12 without giving them any reasonable opportunity of being heard.

On the other hand, the learned counsel for respondent No. 2 has submitted that each of the three petitioners was given a notice and an opportunity to reply to the same and that nothing further was required to be done.

3. It is true that looking to the nature of their employment, the petitioners were not given continuous employment, but they were being employed for each academic term since the date of their initial appointment. In fact, 10 petitioners are given employment in this manner since last about 11 to 12 years whereas 5 petitioners are employed in this manner for the last seven years and petitioner No. 16 is being employed since 1994 in the above manner. The break in their services, therefore, appears to be on account of the fact that during vacations the Mid Day Meal Scheme is not required to be operated. In the Government Resolution dated 6.10.1998 (Page 63) it is mentioned that the persons who have already worked as administrators may be re-employed if their previous performance was found to be satisfactory and if they had not committed any serious irregularity or misconduct. While the object underlying imposition of such condition is certainly laudable,

considering the fact that finding a person guilty of serious irregularity or misconduct entails non-reemployment and, therefore, for all practical purposes termination of service, it would be in the fitness of things if consistent with the mandate of Articles 14 and 16 of the Constitution petitioner Nos. 1, 11 and 12 get a reasonable opportunity of defending themselves.

4. The petition is, therefore, disposed of with the following directions :-

The second respondent shall give, within two months from the date of receipt of the writ or certified copy of this judgement, a fresh show cause notice to the petitioners setting out the allegations on the basis of which the second respondent does not propose to reemploy the concerned petitioners. If the second respondent proposes to rely on any material adverse to the petitioners, the petitioners shall be given copies of the statements or personal inspection and permission to take extracts from such material. After doing so, the petitioners will be given an opportunity of filing a reply and producing their evidence and thereafter the second respondent shall take decision afresh. This exercise shall be completed within three months from the date of filing of reply by the concerned petitioners.

In case the decision of the second respondent is against any of the concerned petitioners, such aggrieved persons shall be at liberty to approach higher authority, namely, Municipal Commissioner of Baroda Municipal Corporation.

It is obvious that if at the conclusion of such inquiry, the concerned petitioner is found not to be guilty of any serious irregularity or misconduct, the second respondent shall consider the case of the concerned petitioner for employment/reemployment.

5. It is clarified that this Court has not gone into the merits of the allegations made against petitioner Nos. 1, 11 and 12 or any challenge to the findings given by the authorities on such allegations. In case the allegations are found to be proved at the de nova inquiry, it will be open to the petitioners to challenge such decision in accordance with law. The Court has also not gone into the prayer for regularization of services of the petitioners for which it will be open to the petitioners to take out appropriate proceedings before

the appropriate forum.

6. The petition stands disposed in terms of the aforesaid directions and clarifications.

Sd/-

July 5, 1999 (M.S. Shah, J.)

sundar/-